IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6226 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARDAS M KARIA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MT KIKANI for Petitioner(s):1,TANNA ASSOCIATES for Petitioner: 1,
MR.L.B.DABHI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 21/09/2005

ORAL JUDGMENT

This Special Civil Application is preferred making following prayers.

A. Be pleased to issue a writ of certiorari or mandamus or any other appropriate writ, or direction

for quashing and setting aside the impugned judgment and order dated 12/5/1992 passed by the tribunal.

B. Be pleased to declare that the petitioner was entitled to get promotion as an Office Superintendent in P.T.C. at Junagadh or in any other office of the Police Department under Respondent No.2 with effect from 5th March, 1990 or atleast with effect from 9th March, 1990;

C. Be pleased to direct the respondents to give promotion to the petitioner on the post of the Office Superintendent with effect from 5th March, 1990 or from 9th March, 1990 and to direct them to issue the necessary orders or promotion;

D. Be pleased to direct the respondents to pay the salary and other emoluments to the petitioner according to the pay scale applicable to the post of Office Superintendent with effect from 5th March, 1990 or 9th March, 1990;

E. Be pleased to direct the respondents to fix the pension etc. of the petitioner as if the petitioner had retired on superannuation from the post of Office Superintendent and to pay him the pension, etc. accordingly;

F. Be pleased to set aside the impugned

judgment and order dt. 12Trh May, 1992 passed by the Tribunal and allow the applicant's appeal No.18 of 1992 filed by him before the Tribunal;

G. Be please to grant any other and further reliefs that may be deemed fit in the circumstances of the present case;

H. Be pleased to award of this petition.

2.The facts giving rise to the petition can be narrated thus.

2.1The petitioner was serving in the administrative branch of the Police Department of State of Gujarat and retired from service on reaching age of superannuation on 31/3/1990 as a Head Clerk from the Office of D.S.P. at Junagadh. He joined the services on 26/5/1948 as a Junior Clerk and was promoted as Senior Clerk from 5/7/1971 and, thereafter became Head Clerk from 11/2/1985. He is aggrieved by non-grant of promotion to the post of Office Superintendent, though he was already on select list.

3.The petitioner was already on the select list for

the post of Office Superintendent. Above the petitioner in the select list was one Mr.A.D.Bhatia. Said Mr.A.D.Bhatia came to be promoted to the post of Office Superintendent, but, for his personal reasons, he refused to accept the promotion by communication dated 5/3/1990. The said communication came to be finally accepted on 29/3/1990. The petitioner reached the age of superannuation on 31/3/1990. According to the petitioner, orders for his promotion ought to have been passed immediately on acceptance of the refusal to promotion of Mr.Bhatia. The petitioner would have got the benefit of the post of Office Superintendent and satisfaction of having retired in that capacity. The petitioner therefore, approached the Civil Services Tribunal with Appeal No.18 of 1992 with his grievances and prayer. But, the tribunal by order dated 12/5/1992 dismissed the appeal and hence, this petition.

4. Learned Advocate Mr.M.T.Kikani for the petitioner submitted that it is not only a question of monetary gains but, its question of one's

satisfaction of having retired in a particular capacity. The petitioner joined as a junior clerk and put in a service of about 42 years and had he been given the benefit of promotion, he would have atleast got satisfaction besides some monetary benefit.

5.1 Mr.Kikani submitted that it is not a case of one claiming to be promoted. The case of the petitioner is different in the sense that petitioner was already in select list for promotion. But, because of inaction on the part of the respondent or sluggish movement of files on part of the respondent, petitioner is denied the benefit of promotion.

5.2Mr.Kikani submitted that there have been instances in past where people came to be promoted for a short period. He has given example of one Mr.M.B.Phanse, Judge of City Civil Court, one Mr.B.R.Shah, Chief Engineer, R & B and one Mr.K.H.Shah, Chief Engineer, (P.H.E.) He therefore, submitted that similar treatment ought to have been given and may be given to the

petitioner.

5.3Mr.Kikani submitted that the petitioner will let go of his monetary benefits by way of arrears. Therefore, petition may be allowed.

6.On the other hand the petition is opposed to by learned A.G.P., Mr.L.B.Dabhi. He submitted that there is no allegation of any mala-fides or colourable exercise of power. He also submitted that time consumed in taking decision cannot be considered as inordinate. He also submitted that the order of tribunal is sought to be challenged in this petition, and therefore, the petition may be treated as one under Article 227 of Constitution of India. The scope of interference by this Court in exercise of powers under Article 227 of Constitution of India would be very limited. The appellant has not been able to indicate existence of any factor which would call for interference with the order of the Tribunal by this Court in exercise of powers under Article 227 of Constitution of India. He submitted that petition, may therefore, be dismissed.

7.The first factor that requires to be noted is, though nomenclatured as a petition under Article 226 and 227 of Constitution of India, in substance, the petition challenges the order of the tribunal and therefore, it has to be treated as a petition under Article 227 of Constitution of India and is treated as such.

8.The petitioner has not been able to show any jurisdictional error or legal perversity in the impugned order and as such, no interference is called for at the hands of this Court in exercise of power under Article 227 of Constitution of India.

9.Apart from the above aspect, even if the case of the petitioner is considered on merits, then also, the relevant dates if considered, would indicate that the tribunal was fully justified when it observed that there was no inordinate delay on part of the respondent authorities.

9.1It is not in dispute that Mr.Bhatia, whose name appeared before the name of the petitioner in the

select list, expressed his unwillingness to accept promotion by communication dated 5/3/1990. The said communication reached the office of the respondent on 9/3/1990 and the decision was taken to accept the said unwillingness on 29/3/1990. Thus, decision is taken within 20 days. As such, there is no inordinate delay, nor is there anything to show that this delay was deliberate. This factual findings of the tribunal appear to be fully justified, because even in the petition, there are no allegations of any mala-fides. The petitioner retired on 31/3/1990 and as such, there was time of only one day in between and no fault can be found with respondent authorities, when there are no attributions of any mala-fies or colourable exercise of powers. It has to be recognized that procedural requirements do take time in Government Offices. In absence of any allegation of mala fides, inaction on part of the respondent authorities on 30/3/1990 and 31/9/1990 cannot be considered as sufficient ground to exercise extraordinary writ jurisdiction in favour of the petitioner.

10.This Court is therefore, of the view that extraordinary powers under Article 227 of the Constitution of India are not required to be exercised to disturb the findings of the tribunal in absence of any jurisdictional error or legal perversity. No interference is called for, even otherwise, in absence of any allegation of mala-fides or colourable exercise of powers, and petition therefore must fail.

11.The instances indicated by learned Advocate Mr.Kikani in respect of Mr.M.B.Phanse, Judge of City Civil Court, one Mr.B.R.Shah, Chief Engineer, R & B and one Mr.K.H.Shah, Chief Engineer, P.H.E., in isolation and in absence of other material calling for exercise of powers under Article 227 of Constitution of India, cannot be a ground for accepting the case of the petitioner. Said contention therefore, cannot be accepted.

12.Petition therefore, stands dismissed. Rule is discharged. No costs.

(A.L.DAVE, J.)

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